IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 27781 of 2007(G)

PETITIONERS:

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1. **MANOJ S.,**
   JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT MUNDAIKKAL PUTHIYA VEEDU,PARAKKODE P.O ADOOR, PATHANAMTHITTA.

2. **SHINA ANTONY,**
   JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT SANTIKAYIL, NEYYATTINKARA, NEYYATTINKARA P.O., THIRUVANANTHAPURAM.

3. **ABILAL G.O.,**
   JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT CITY LUTHERAN CHURCH,PANAVILA JUNCTION THYCAUD P.O., THIRUVANANTHAPURAM.

4. **SREELETHA S.,**
   JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT RUGMINI VILASOM, KOOVALASHERY P.O., NEYYATTINKARA.

5. **BRILLA VARGHESE U.,**
   JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT V.U.SADANAM, MULLUVILA, MULLUVILA P.O. NEYYATTINKARA.

6. **BAIJU S. JOSEPH,**
   JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT BEZLEL KALAYIL,OTTASEKHARAMANGALAM P.O THIRUVANANTHAPURAM.

7. ANILA C.,
JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT SAJINI, LOURDUPURAM,KANJIRAMKULAM P.O. THIRUVANANTHAPURAM.

8. CHITHRA S.S.,
JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT SARAS, EZHAKODE, MALAYINKIL P.O., THIRUVANANTHAPURAM.

9. MADHURI M.NAIR R.,
JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT MADHURI, H.NO.720, SANKAR NAGAR, NEERAMANKARA, KAIMANAM P.O.,THIRUVANANTHAPURAM.

10. SUMALEKSHMI P.S.,
JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT NANDHANAM,MYLODU, KOLLODU P.O., MALAYINKIL, THIRUVANANTHAPURAM.

11. RESHMI R.C.,
JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT ANIL BHAVAN,S.N.PURAM,NETHAJIPURAM P.O POTHENCODE, THIRUVANANTHAPURAM.

12. DEEPA S.S.,
JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT NANDANAM, GNRA-89, ELLUVILA,MANKUZHY, PANGAPARA P.O., THIRUVANANTHAPURAM.

13. DEEPA V.,
JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT R.T.MANDIRAM, KUNNATHOOR WEST, KUNNATHOOR P.O., KOLLAM.

14. GEETHA GOVINDAN K.M.,
JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT VISHNU VIHAR, TC.68/873, KUMALY LANE, PACHALLOOR P.O., THIRUVANANTHAPURAM.

15. DIJI PRESSA S.S.,
JUNIOR ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT SAROVARAM, NEAR ARIYOTTUKONAM TEMPLE, ANDOORKONAM P.O., THIRUVANANTHAPURAM.

16. B. KRISHNAKUMAR,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT DHANYA NIVAS, MANGAD, THIRUMALA P.O., THIRUVANANTHAPURAM.

17. SUBHASH BABU S.,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT T.C.NO.64/477, VASANTHALAYAM, EDAGRAMOM, KARUMAM, THIRUVANANTHAPURAM-695002.

18. SAJI V.Y.,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT POOVAMCODE PUTHEN VEEDU, CHEMBOOR, OTTASEKHARAMANGALAM P.O., THIRUVANANTHAPURAM.

19. PREMA KUMARI P.,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT TC.NO.6/440(2),"SREEDHAR", MULAMOODU LANE, VATTIYOORKAVU P.O., THIRUVANANTHAPURAM-13.

20. LALU C.,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT "SANGEETHA", CHEMBOOR, OTTASEKHARAMANGALAM,THIRUVANANTHAPURAM-695 125.

21. GYANEESH N.N.PILLAI,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT PALAPPALLIL VEEDU,CHENGAMANADU POST, KOTTARAKKARA-691 557.

22. DIDI THOMAS,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT T.N.BUNGALOW, MANNANKONAM P.O., THIRUVANANTHAPURAM.

23. BINOY VISWAM,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT VISHWAMANGALAM, T.C.NO.43/209(2), THOTTAM, MANACAUD P.O.,THIRUVANANTHAPURAM-695009.

24. BINDU S.,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT BINDU BHAVAN, PAKALOOR,PALLICHAL P.O., THIRUVANANTHAPURAM.

25. BINDU O.G.,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT CHARUVILA PUTHEN VEEDU, MELAMCODE, NEMOM P.O., THIRUVANANTHAPURAM-695 020.

26. ALEX D.,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT THULASI BHAVAN, KIZHAKKECHARUVILA, ARUVAKKODU, PAPPANAMCODE P.O.,THIRUVANANTHAPURAM.

27. BAIJU RAJ R.,
OFFICE ASSISTANT, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT NELLIYODU VEEDU, THIRUVALLAM P.O., THIRUVANANTHAPURAM-695 027.

28. MOHAMMED NASIF A.,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., KOZHIKODE, RESIDING AT KANCHIROLY THAZHEKUNIYIL KADAVE ROAD,ATHOLY (PO), KOZHIKODE DISTRICT, PIN-673 315.

29. VINEESH BABU K.,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., KOZHIKODE, RESIDING AT KANCHAKODU HOUSE, KANNAMMOOLA, KANNUR POST.

30. ARUN S.,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM,RESIDING AT MEKKATHIL VEEDU, KANJIRAMKULAM P.O., THIRUVANANTHAPURAM.

31. RAJAN K.,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM,RESIDING AT AKKARAVILA PUTHEN VEEDU, NEMOM P.O., THIRUVANANTHAPURAM.

32. SUDEEP KUMAR N.,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., KOZHIKODE, RESIDING AT NEELIYATH HOUSE, NANMANDA POST, KOZHIKODE-673 613.

33. M. PADMAJAM,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM,RESIDING AT ERATHIKKARA VEEDU, KOTTUKAL P.O., THIRUVANANTHAPURAM.

34. MAJUSAM S.A.,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM,RESIDING AT BINDU NIVAS, ARUMANOOR, POOVAR P.O., THIRUVANANTHAPURAM.

35. JAYALEKSHMI M.,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM,RESIDING AT ARCADIA HOUSE NO.642, DARSHAN NAGAR, PEROORKADA, THIRUVANANTHAPURAM.

36. B. CHANDRAN,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM,RESIDING AT MOONLIGHT, VENGANOOR P.O., THIRUVANANTHAPURAM.

37. M. VINOD KUMAR,
PEON, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., KOZHIKODU, RESIDING AT "SURABHI" P.O. THALAKULATHUR, KOZHIKODE DISTRICT-673 317.

38. N. SASIKUMAR,
DRIVER, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT LALITHA BHAVAN, VATTIYOORKAVU,MANIKANTESWARAM P.O. THIRUVANANTHAPURAM.

39. GIREESH KUMAR S.,
DRIVER, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT SREEMANDIRAM, BAPUKI NAGAR, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

40. BIJUKUTTAN NAIR R.,
DRIVER, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT LATHA BHAVAN, JUBILEE NAGAR, VATTAPPARA, THIRUVANANTHAPURAM.

41. SAJIKUMAR N.,
DRIVER, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT ARUVILAKAM, VAKADETHIL PUTHEN VEEDU,THIRUPURAM P.O THIRUVANANTHAPURAM.

42. RATHEESH KUMAR B.,
DRIVER, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT PADMALAYAM, KULAMKASAKONAM, MACHAD P.O., THIRUVANANTHAPURAM.

43. SREEKUMAR K.,
DRIVER, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT SREEVIHAR, T.C.NO.6/1720, VETTAMUKKU,THIRUMALA P.O THIRUVANANTHAPURAM.

44. RAJEEV T.S.,
MESSENGER, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT RAJI BHAVAN, VENGAPOTTA, KAZHIVOOR P.O., THIRUVANANTHAPURAM-695 526.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.S.M.ALTHAF

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT,
TRANSPORT DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

3. KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., REPRESENTED BY ITS MANAGING DIRECTOR, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM-695 023.

4. THE MANAGING DIRECTOR,
KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., TRANSPORT BHAVAN FORT,THIRUVANANTHAPURAM-23.

ADVOCATE GENERAL SRI. C.P.SUDHAKARA PRASAD
BY ADVS. SRI.KRB.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL SC FOR KTDFC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007 ALONG WITH WPC NOS. 28840/2007, 27877/2007 AND 27782/2007, THE COURT ON 07/11/2007 DELIVERED THE FOLLOWING:

WP(C) NO: 27781/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF THE KTDFC LTD. DATED NIL.

EXT.P2. COPY OF THE SERVICE RULES OF THE KTDFC LTD.

EXT.P3. COPY OF THE LETTER BY THE CORPORATION TO THE GOVT. DT. 4/10/2005.

EXT.P4. COPY OF THE GO MS NO. 13/2006,D T. 22/2/2006.

EXT.P5. COPY OF THE GO MS NO. 15/06 DT. 22/2/2006.

EXT.P6. COPY OF THE GO MS NO. 14/06 DT. 22/2/2006.

EXT.P7. COPY OF THE GO MS NO. 4/2007/TRAN DT. 12/2/2007.

EXT.P8. COPY OF THE JUDGMENT IN WPC NO. 5003/2007 DT. 13/07/2007.

EXT.P8A. COPY OF THE JUDGMENT IN WPC NO. 5139/2007 DT. 13/07/2007.

EXT.P9. COPY OF THE NOTICE ISSUED TO THE PETITIONERS 1 TO 3 AND OTHERS BY THE GOVT.

EXT.P10. COPY OF THE NOTES OF ARGUMENT SUBMITTED BY THE PETITIONERS AND OTHERS BEFORE THE GOVT. DT. 14/08/2007.

EXT.P11. COPY OF THE GO MS NO. 3/2007 DT. 5/1/2007.

EX.T.P12. COPY OF THE GO MS NO. 36/2007 DT. 10/09/2007.

EXT.P13. COPY OF THE INDIVIDUAL ORDERS BY THE GOVT. DIRECTING THE CORPORATION TO TERMINATE THE SERVICE OF THE PETITIONERS DT. 10/09/2007.

EXT.P14. COPY OF THE INDIVIDUAL ORDERS BY THE CORPORATION TERMINATING THE SERVICE OF THE PETITIONERS DATED 12/09/2007.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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V.GIRI, J.

W.P.(C).No.27781, 27782,
27877 & 28840 of 2007

Dated this the 7th day of November, 2007.

JUDGMENT

The petitioners in all these cases were employees of the Kerala Transport Development Finance Corporation (hereinafter referred to as "the Corporation"), having been appointed on casual basis in the first instance and regularized in the respective posts pursuant to orders issued by the Government. Their services were subsequently terminated by orders passed by the Government followed by consequential orders issued by the Corporation. Those orders are under challenge in these writ petitions.

2. Most of the contentions taken up by the petitioners are common. Common issues are also involved. Therefore, the writ petitions have been heard together and are being disposed of by this common judgment. W.P.(C)No.27782/07 is taken as the leading case for the purpose of convenience.

3. Petitioners 1 to 33 were working as Junior Assistants in the service of the Corporation. Petitioners 34 and 35 were working as Record Keepers and petitioners 36 to 38 were working as sweepers. The 2nd respondent Corporation is a Government company as defined in Section 617 of the Companies Act. As per Ext.P1 Memorandum and Articles of Association, the Board of Directors of the Corporation is empowered to appoint provisionally, technical and skilled employees in the company. Prior approval of the Governor is necessary for appointment to posts carrying a basic pay of Rs.2,500/- or more per month.

4. During 2005, pursuant to the directions issued by the Reserve Bank of India and the Accountant General, the Corporation decided to make regular appointments to various posts. It seems that the Board of Directors of the Corporation in its meeting held on 18.2.2005 approved the service rules and staff pattern of

the Corporation and on 10.5.2005, it was forwarded to the Government for approval. Ext.P2 service Rules, inter alia, provides that all first appointments in the Corporation shall be made on the advice of the Public Service Commission as per the provisions of the KPSC (Additional Functions as Respects certain Corporations and Companies) Act, 1979. The service Rules also provide for temporary appointments for periods not exceeding 180 days. The principles of communal rotation as contained in Articles 14 to 17 of the Constitution are also made applicable to the appointments in different categories of posts in the Corporation. As noted above, Ext.P2 service Rules were framed by the Corporation and was forwarded to the Government and on 10.5.2005 for its approval. In the meanwhile, the Board of Directors in its meeting held on 30.8.2005 decided to seek the regularisation of one person working as a concurrent auditor (contract

basis), one person working as Assistant Manager (on contract basis), 66 persons working as Assistants, 15 persons working as Office Assistants, 7 persons working as drivers, 3 persons working as Record Keepers, 13 persons working as Peons/Messengers and 5 persons working as sweepers. The petitioners in these writ petitions are included in this list. All the petitioners were working in their respective categories on casual basis or daily wages basis, some of them from the year 2000, most of them since 2003 and 2004. Few persons have been working in the Corporation since 1997. The Corporation sought for orders from the Government sanctioning regularisation of the services of the contract and daily wages personnel, who were, then in the service of the Corporation. The request in this regard has been made on 4.10.2005 as evidenced by Ext.P3.

5. By Ext.P4 G.O.(MS)No.13/06/transport dated 22.2.2006, Government accorded sanction

for creation of 143 posts in various categories with the scales of pay as shown in the Annexure to the said order. By Ext.P5 order passed on the same day, the Government accorded sanction for regularisation of 106 contract/daily wages employees working in the Corporation and absorption of such persons to the regular service of the Corporation against the newly created posts counting their previous casual service, by giving retrospective effect to the order of regularisation, without any monetary benefits.

6. In other words, on 22.2.2006, the Government passed an order sanctioning 143 posts in different categories and on the same day the Government accorded sanction for regularisation of the services of 106 persons working on contract/daily wages basis from a date prior to the date on which the posts in question were sanctioned. Pursuant to Ext.P5 all the petitioners were regularized in service with

effect from the date on which they had been engaged in the Corporation on casual/daily wages basis.

7. By a separate order Ext.P6 passed on the same day i.e. 22.2.2006, the Government approved Ext.P2 service Rules of the Corporation, subject to certain amendments regarding leave rules as mentioned in the Annexure thereto.

8. While the petitioners, therefore, continued in service, the Government, on 12.2.2007 passed an order holding that the Government have reviewed the entire exercise, which took place as per Ext.P5 order of regularisation of 106 employees, who were appointed on contract/daily wages. This exercise was undertaken because it was found that the daily wages/contract appointments were not made through any competitive examinations/interview, by inviting applications or by advertising the vacancies through dailies. Communal reservation

was not followed, while regularizing the appointments. Nor was there any representative of Scheduled Caste/Scheduled Tribe communities among the ministerial staff. Government, therefore, proceeded to cancel Ext.P5 with immediate effect.

9. Ext.P7 order passed by the Government so cancelling the regularisation was challenged in a batch of writ petitions before this court. By Ext.P8 judgment dated 13.7.2007, the writ petitions were allowed on the ground that Ext.P7 order was passed in violation of the principles of natural justice. This court made it clear that the court is not expressing any opinion on the other contentions raised by the petitioners. The Government was given liberty to pass fresh orders in the matter after affording an opportunity of being heard to the affected persons.

10. Pursuant thereto, Ext.P9 notice was issued by the Government to all the petitioners

requiring them to show cause why the order by which their services were regularized should not be cancelled. The reason given in the show cause notice was that the engagement of 106 persons was irregular, inasmuch as that it was done without following any recruitment procedure and without observance of the principles of communal rotation. Objections were filed by the petitioners to the said notice. Government passed Ext.P12 order rejecting the objections and held that the sanction for regularisation issued as per Ext.P5 is wholly unjustified and illegal. The said order was, therefore, revoked. Almost identical orders were issued as Ext.P13 series to each one of the employees and their services stood terminated pursuant to Ext.P14 orders issued by the Corporation. The petitioners challenge Exts.P12, P13 and P14 orders of the Corporation. They also seek a mandamus commanding the respondents to reinstate them with continuity of service, back wages and

other benefits arising from the date of their termination. Petitioners contend that the Government acted illegally and without jurisdiction in revoking Ext.P5 order by which the Government had sanctioned regularisation of 106 employees, working in different categories in the Corporation. Ext.P5 order, assuming that the same is administrative, cannot be revoked. The appointment of the petitioners cannot be construed as illegal. Significantly, all the petitioners are qualified in terms of Ext.P2 service Rules. They have been in service for several years. They have continued in service for almost an year since Ext.P5 order, when the same was cancelled without any justification. None of the reasons given by the Government for cancelling its own order is either tenable or reasonable. Apparently, extraneous reasons have influenced the Government in revoking Ext.P5 order.

11. Separate counter affidavits have been filed by the Government and the Corporation. The orders by which the earlier order of regularisation is cancelled is sought to be upheld by the Government and the Corporation. It is contended that Ext.P5 order of regularisation was per se illegal. All the persons who have been regularized including the petitioners were originally appointed on daily wages basis. No method of appointment was adopted. Regularisation was ordered without any justification. The employment in question is public employment. Thus vacancies should have been notified, applications invited and all eligible persons should have been given an opportunity to participate in the selection. Ext.P5 order is therefore violative of Articles 14 and 16 of the Constitution. The Government, therefore, was entitled to revoke it.

12. It is further contended that a Constitution Bench of the Supreme Court in the

decision reported in **Secretary of State, State of Karnataka v. Uma devi {2006(4) SCC 1}** held that regularisation of the services of persons appointed on a provisional or on daily wages basis is unconstitutional. Ext.P5 order should, therefore, be treated as void going by the principles laid down in **Umadevi.** The Government in passing Ext.P12 order had, therefore, only corrected a clear error of jurisdiction committed by the Government.

13. Going by the contentions raised by either side, in my opinion, the following issues may be formulated for consideration:

(a) Whether Ext.P12 order passed by the Government revoking its earlier order of regularisation of services of 106 employees is hit by the observations made by the Supreme Court in paragraph 53 of its judgment in **Umadevi.**

(b) Whether Ext.P5 order of regularisation of services of 106 persons falls into the category of irrevocable decision of an administrative authority and consequently whether Ext.P12 order is without jurisdiction?

(c) Whether the reasons given by the Government in Ext.P12 order, for justifying its revocation of Ext.P5 order are tenable or otherwise adequate?

(d) Whether the action of the Government and the consequential action taken by the Corporation terminating the services of persons who are in the services of the Corporation for several years albeit on daily wages basis is violative of Articles

14, 16 and 21 of the Constitution?

(e) Whether the petitioners are entitled to regularisation of their services in the light of the fact that the Government have passed orders similar to Ext.P5 in other cases involving other Government corporations?

14. I heard learned Senior counsel Sri.T.P.K.Nambiar, assisted by Sri.S.M.Althaf, Shri.P.B.Suresh Kumar and Sri.T.Krishnanunni on behalf of the petitioners, Advocate General Sri.C.P.Sudhakara Prasad assisted by Sri.P.Nandakumar on behalf of the State and Sri.K.R.B.Kaimal, Senior Counsel, assisted by Sri.Unnikrishna Kaimal, on behalf of the Corporation.

Regarding question (a)

15. Sri.Kelu Nambiar, learned Senior counsel, submits that the order passed by the

Government revoking Ext.P5 and directing the termination of the services of the petitioners is hit by the observations made by the Supreme Court in **Umadevi'**s case. Reference in this regard is made to paragraph 53 of **Umadevi** in particular. For the sake of appreciating this argument, para 53 is extracted hereunder:

> **"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (AIR 1967 SC 1071), R.N.Nanjudappa (1972 (1) SCC 409) and B.N.Nagarajan (1979 (4) SCC 507) and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who**

> **have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."**

16. The contention is that though in **Umadevi** the Supreme Court held that appointments on provisional basis and regularisation of such appointments were found to be unconstitutional, the court itself had carved out an exception in relation to cases of regularisation already made, provided they were not sub judice. Reference in this regard is made to the following sentence:

> **"We also clarify that regularisation, if any, already made, but not sub judice, need not be reopened based on this judgment."**

17. Mr.Nambiar contends that Ext.P5 order which directed regularisation of the services of the petitioners is dated 22.2.2006 and Umadevi was rendered on 10.4.06, that there is an interdiction in para 53 of the judgment against reopening of any order of regularisation which had been passed prior to the date of the judgment.

18. I am unable to accept this contention for more than one reason. Firstly, the law laid down in **Umadevi** is in clear and categoric terms. Public employment should be informed by adherence to the constitutional mandate under Articles 14, 16 and 21 of the Constitution. All appointments which are generally described as "***back door appointments***" are anathema to the constitutional framework, within which public employment as such should be effected.

Government and public authorities should not regularize appointments or services which were made on a provisional basis or on ad hoc basis, casual or daily wages, inasmuch as such appointments were obviously an exception to regular recruitment to any sanctioned post in the Government or a public authority. To regularize such ad hoc appointments, which may be resorted to by the Government or the public authority in exigencies of service will be, not only doing violence to statutory rules or rules having the force of law, governing such appointments in public service, but more importantly would be violative of Articles 14 and 16 of the Constitution. In other words, the Supreme Court categorically held that regularisation of ad hoc service/casual service or service on daily wages basis would be plainly unconstitutional. After having so held, the limited exception carved out by the Supreme Court in the case of regularisation already made

cannot be construed as to mean a positive mandate by the court to the Government or public authority to refrain from revoking any orders of regularisation, if they are otherwise unconstitutional and therefore, void. That is to say, the Government is entitled to take note of the law laid down by the Apex Court and then, as a responsible constitutional functionary, if it decides to mend its own errors and revoke its earlier decisions, which are otherwise unconstitutional, it cannot be said that the Supreme Court has interdicted any such legitimate action on the part of the Government or a public authority. In my view, all that the words "need not be reopened based on this judgment" meant is that in cases referred in para 53 of the judgment, it need not be understood by a Government or a public functionary that all orders of regularisation which were passed prior to the judgment should be necessarily reopened. In other words, where

regularisation has been effected prior to the judgment, there is no mandate to the Government or any other public authority to necessarily reopen such orders. It is left to the wisdom of the Government or other public authority, as the case may be. This is obviously different from saying that there is an interdiction against a Government or a public authority, on its own revoking any unconstitutional decision taken by it. Of course, in doing so, if a declaration by a Constitution Bench has triggered any lethargic functionary into motion, it cannot be said that the rectification of an error, even at a belated stage, should otherwise be condemned or should be treated as interdicted. In my view, in the ultimate analysis, the question is whether the original decision taken by the Government as Ext.P5 to regularize the services of 106 employees of the Corporation is unconstitutional and therefore, susceptible to a correction by the Government itself.

19. There is yet another reason, which persuades me to come to the same conclusion. A reading of the first part of para 53 of the judgment would indicate that their Lordships were essentially referring to regularisation of irregular appointments, as distinguished from illegal appointments and duly qualified persons in duly sanctioned posts continuing to work for 10 years or more, without the intervention of the orders of the courts or of tribunals. In such cases, the Union of India, State Government or its instrumentality should take steps to regularize as a one time-measure, the services of irregularly appointed persons, who have worked for 10 years or more in duly sanctioned posts. In my view, the clarification, as it were, given by the Supreme Court in the latter portion of para 53, to the effect that regularisation, if any, already made need not be reopened based on the judgment is intended to refer to the regularisation mentioned in the

first part of para 53 viz., regularisation of irregular appointments (as distinguished from illegal appointments) of duly qualified persons in duly sanctioned posts working for 10 years or more. The limited exception carved out in the last portion of para 53 is not intended to save illegal appointments made against non-sanctioned posts, which otherwise are liable to be branded as unconstitutional.

Regarding contention (b):

20. Mr.Suresh Kumar contends that there are certain decisions taken by an administrative authority, which are imputed with the status of irrevocable decisions in administrative law. Reference is made in this regard to the following passages of Wade and Forsynth on Administrative Law.

> **"In the interpretation of statutory powers and duties there is a rule that, unless the contrary intention appears, 'the power may be exercised and the duty shall be performed from time to time as occasion**

> **requires'. But this gives a highly misleading view of the law where the power is a power to decide questions affecting legal rights. In those cases the courts are strongly inclined to hold that the decision, once validly made, is an irrevocable legal act and cannot be recalled or revised. The same arguments which require finality for the decisions of courts of law apply to the decisions of statutory tribunals, ministers and other authorities."**

He also refers to the following passage in Craig on Administrative Law, which reads as follows:

> **The discussion in the previous section was concerned with cases where there has been a representation which the individual seeks to rely on. This should be distinguished from the case where there has been a final determination, which cannot be altered because it is a dispositive decision in that case.**
>
> **This is exemplified by the Denton Road Case. The plaintiff's house was damaged during the war and later demolished by the local authority. The preliminary determination by the War Damage Commission was that the property was a total loss. This was later altered, the Commission saying that the loss was non-total. It was held that the second determination was**

> **final and that where Parliament had imposed a duty of deciding any question the deciding of which affected the rights of subjects, such a decision, when made and communicated in terms which were not preliminary, was final and conclusive. It could not, in the absence of express statutory power or the consent of the person affected, be withdrawn. The intra vires decision was binding as a valid decision, in and of itself."**

21. Mr.Suresh Kumar further contends that the decision taken by the Government in Ext.P5 order should be taken as a final determination made by the Government, affecting the legal rights of the petitioners and others similarly situated. In such circumstances, the decision, which led to Ext.P5, was irrevocable and consequently the Government had acted bereft of jurisdiction in revoking the same.

22. Per contra, it was submitted by the learned Advocate General and Mr.K.R.B.Kaimal, senior counsel, that Ext.P5 order passed by the Government was illegal in the sense that it was

unconstitutional. It violated the principles of equality in public employment, radiating from Articles 14 and 16 of the Constitution. The decision taken by the Government leading to Ext.P5 should, therefore, be treated as ultra vires. Powers of the executive Government are administrative and so it can never be attributed the status of an irrevocable decision.

23. The crucial aspects which arise for consideration at this juncture, in my opinion, is whether Ext.P5 order of the Government viz., Government Order dated 22.2.2006 is unconstitutional and therefore ultra vires the powers of the Government.

24. Insofar as ad hoc or provisional appointments in public services are concerned, **Umadevi** has categorically held that such services cannot be regularized and regularisation of such services cannot be treated as a method of appointment or source of recruitment. The repeated affirmation of the

Supreme Court in **Umadevi**, essentially, is to the following effect:

(a) Adherence to the rule of equality in public employment is a basic feature of our Constitution and the Rule of law is the core of our Constitution.

(b) Consistent with the scheme for public employment, unless the appointment is in terms of the relevant rules and after a proper competitive examination among qualified persons, the same would not confer any right on the appointee going by the constitutional scheme of public employment. The right either of the executive or of the court would not extend to the executive or the court being in a position to direct that

appointments made in clear violation of the constitutional scheme can be treated as permanent.

(c) The mere fact that the person concerned has worked for some time and in some cases for a considerable length of time, should not be taken as the sole ground to jettison the constitutional scheme of appointment and to take the view that a person, who temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating a mode of public employment that is not permissible.

25. **Umadevi** was considered and followed by the Supreme Court in several other decisions

rendered later and the learned Advocate General and Mr.Kaimal referred to the following decisions:

26. **National Fertilizers Ltd. v. Somvir Singh {2006(4) SCC 493}, Principal, Mehar Chand Polytechnic v. Anu Lamba {2006(7) SCC 161}, State of U.P. v. Desh Raj {2007(1) SCC 257}, Municipal Corpn. Jabalpur v.Om Prakash Dubey {2007(1) SCC 373}, Kendriya Vidyalaya Sangathan v. L.V.Subramanyeswara {2007(5) SCC 326}, Mahadeo Bhau Khilare (Mane) v. State of Maharashtra {2007(5) SCC 524}** and **Punjab Water Supply and Sewerage Board v. Ranjodh Singh {AIR 2007 SC 1082}**. Of particular significance are the pertinent observations made by the Supreme Court in **2007(1) SCC 257** and **373**, wherein the court held that recruitment to public employment otherwise than by following a selection procedure and due notification of the post will have to be treated as unconstitutional, illegal and therefore, void. In other words, if an

order for regularisation of the services of persons, who were originally engaged on a daily wages basis and against non-sanctioned posts, without a recruitment by advertisement and giving an opportunity to qualified persons for applying to the post and for participating in the selection process, would be a negation of Articles 14 and 16 and an order which directs regularisation of services of such persons would, therefore, be a void order.

27. In the present case, I am of the view that Ext.P5 order is per se unconstitutional and ultra vires the powers of the Government and consequently void. It may be noted that none of the 106 employees whose services was directed to be regularized was appointed in the Corporation after a notified selection. In fact, all of them were engaged at a point of time when those posts were not even sanctioned by the Government. No selection procedure seems to have been followed in anyone of the cases. No

applications were invited and other qualified persons did not get an opportunity to seek appointment in an instrumentality of the State, which is a 'State' within the meaning of Article 12 of the Constitution. It is under Ext.P4 order dated 22.2.2006 that 106 posts were sanctioned in the Corporation. It is under Ext.P6 order of the same date that Ext.P2 service Rules were approved by the Government. It is on the same day that the Government seems to have passed an order regularizing the services of 106 persons, who admittedly, had been engaged on casual or on daily wages basis (except in the case of certain persons appointed on a contractual basis). In fact, it is noteworthy that the regularisation as per G.O.(MS)No.15/06 dated 22.2.2006 seems to have succeeded an order by which the service rules Ext.P2 was approved by the Government as per G.O.(MS)No.14/06 dated 22.2.2006. If we go by the numbering of the Government orders, the order for regularisation of illegal appointments

has been passed after the Government itself had approved the service rules of the Corporation, which provides that all appointments in the Corporation must be made on advice by the Public Service Commission and that the principles of communal rotation must apply to the same.

28. There are still more infirmities attached to Ext.P5 order. Principles of communal rotation were not kept in mind when it passed Ext.P5 order of regularisation. The necessity to provide employment to persons belonging to Scheduled Caste/Scheduled Tribe was also not kept in mind. Even if ad hoc employment or engagement on casual basis was necessary at one point of time, it seems that persons like the petitioners were engaged without even a reference to the employment exchange. It is, therefore, that Ext.P5 order of regularisation will have to be treated as unconstitutional and therefore ab initio void.

29. If this be so, then is not the Government entitled to revoke an earlier unconstitutional action? Can it be said that Ext.P5, despite being unconstitutional and therefore void should nevertheless be treated as irrevocable merely because Ext.P5 affects the rights of citizens. In my view, if a decision taken by an administrative authority is unconstitutional, then it is ab initio void and no rights would flow there from in favour of a beneficiary of such action. The principles of an irrevocable decision referred to by the learned authors Wade and Forsynth and Craig, seems to have been culled out from decisions rendered by the courts in England in the context of powers exercised by statutory authorities or tribunals. The decisions in question, which were contended to be irrevocable in character, were decisions rendered by authorities with jurisdiction. The principle may not, ipso facto, apply to decisions taken by administrative

authorities in our country where the doctrine of ultra vires, is invoked with reference to the constitutional provisions. The doctrine of ultra vires, insofar as administrative authorities or statutory authorities in England are concerned, is applied with reference to the statutory provisions alone, for the obvious reason that England does not have a written constitution. Insofar as our country is concerned, the doctrine of ultra vires is invoked, in relation to administrative actions being tested on the touchstone of constitutional provisions. Of course, the said doctrine can be invoked in relation to statutory provisions also. But it will have to be remembered that the courts have always placed adherence to the constitutional provisions and conformity with constitutional provisions as being fundamental to the validity and consequently the enforceability of any decision taken by an administrative authority or a statutory authority. Consequently, where a

decision taken by the Government is per se unconstitutional and therefore void, no irrevocability can be attributed to such order and it probably would be the constitutional obligation on the part of the executive Government to set right an infraction of law and constitutional provisions, which it had committed earlier. I also refer to the following decisions cited by the learned Advocate General in this context, wherein it has been held that administrative orders, can also be corrected if it is later found that such orders are vitiated by an error of law or of jurisdiction or that it is otherwise unconstitutional. {**R.R.Verma v. Union of India [1980 (2) SLR 335], Sasidharan v. Reserve Bank of India [1990(2) KLT 573], V.Prakasini v. K.P.S.C and others [1993(1) KLJ 632]}**.

30. If the position were as above, then it is obvious that the Government had acted with jurisdiction when it passed Ext.P12 order

revoking Ext.P5 order. Ext.P5 cannot be held to be irrevocable or otherwise valid, nor can it be attributed any finality so as to make it impervious to a correctional exercise by the Government when it wakes up to its constitutional obligation of revoking an unconstitutional order or action taken by the Government itself.

31. While considering this aspect, it is also necessary to refer to the submission made by Mr.Suresh Kumar that the Articles of Association of the Corporation does not empower the Government to revoke an order in the nature of Ext.P5. The contention is with reference to Clauses 60 and 61 of the Articles of Association. Clause 60(ii) provides that appointment to a post carrying a basic pay of Rs.2,500/- or more per month requires prior approval of the Government. This position is not disputed by the petitioners. Clause 61 provides that subject to the provisions of the

Act, the Board of Directors including Managing and whole time Directors shall be, subject to the powers of the Government to issue such directives as it thinks fit from time to time with regard to the finances and conduct of the business and affairs of the company. The Government is also entitled to vary or annul any such direction. The Directors shall duly comply with and give effect to such directives at all times. Mr.Suresh Kumar contends that though the Government is entitled to issue directives and vary the same, Government cannot exercise the power in such a manner as to revoke an action, which has already been given effect to by the Corporation especially where, it has resulted in accrual of third party rights. In my view, it is not strictly necessary to consider this contention for the reason that Ext.P5 order was issued by the Government in exercise of its executive powers sourced to Article 162 and 166 of the Constitution of India. Ext.P5 order is

administrative in character. The Government is entitled to issue such further orders in relation to Ext.P5. The source of power available to the Government in that regard does not get denuded or depleted, merely because it has already passed an order in the nature of Ext.P5.

32. This is more so in a case where the order passed by the Government in the first instance, Ext.P5, cannot otherwise be sustained on the touchstone of Articles 14 and 16 of the Constitution. All that the Government did while passing Ext.P12, is to wake up to the fact that it had earlier passed an unconstitutional order and therefore it has a constitutional obligation to revoke such an illegal order.

33. Notwithstanding the above position, in deference to the submission made by Mr.Suresh Kumar, I have considered the submission on merits. I am not able to accept the same. Clause 61 of the Articles of Association

declares the overriding powers of the Government, in the matters enumerated therein. Inasmuch as that Clause 60(ii) of the Articles of Association contemplates prior approval of the Government in the matter of appointment to posts carrying a basic pay of Rs.2,500/- or more per month, the original sanction given by the Government, which, in the present case, is Ext.P5 is ipso facto subject to the overriding powers of the Government vouchsafed under Clause 61 of the Articles of Association. In that view of the matter, Ext.P12 can be related to Clause 61 of the Articles of Association as well.

34. In the ultimate analysis, the crucial question is whether the Government was justified in passing Ext.P5 order. If the order is otherwise unconstitutional, the Government had not only the power, but also the duty to embark upon a correctional exercise, which it did, as per Ext.P12.

Regarding contention (c)

35. Once it is found that Ext.P12 cannot be interfered with on the ground that it is without jurisdiction, then the further question which arises for consideration is whether the reasons given by the Government in Ext.P12 order are sufficient to justify its ultimate decision. The Government decided to revoke Ext.P5 essentially on the premise that casual employees or even daily wages employees were engaged in the Corporation without any justification whatsoever. The posts were admittedly not sanctioned prior to Ext.P5. Nor did the Government sanction casual engagement of employees at any point of time, by means of any order that was regularly passed by the Government. In other words, persons were casually engaged, as dictated to by the whims and fancies of persons who were then in authority without regard to the fact that posts were not sanctioned and with less regard to the

fact that what is involved is recruitment to a public employment. Principles of communal reservation were not kept in mind. The necessity to employ sufficient number of persons from the Scheduled Caste/Scheduled Tribe was also not kept in mind. Posts were not advertised. Similarly situated eligible persons did not get an opportunity to participate in the selection process. Engagement of persons on a casual ad hoc or daily wages basis was done, in a surreptitious manner. Even before **Umadevi**, the Supreme Court and this court, on several occasions, held that in the matter of public employment, the Government or an instrumentality of the State, should, as far as possible, make recruitment only on a regular basis. This was obviously observed in breach both by the Government and by the Corporation in the instant case. Was there any reason why posts could not be sanctioned and why regular recruitment could not be resorted to? I have searched in vain to

find any reasons in the present case. I have also taken into account the fact that Ext.P2 service rules were actually passed by the Board of Directors of the Corporation, on 18.2.2005 and were forwarded to the Government on 10.5.2005 for approval. While the draft rules were pending approval with the Government, the Board of Directors of the second respondent corporation, in their 78th meeting held on 30.8.2005 requested the Government to accord sanction for regularisation of contract/daily wages employees of the Corporation. Was there any fact which prevented the Government, at that point of time, in considering the question of approval of the draft service rules and then to require the corporation to make regular recruitment in terms of the rules. I am not able to discern any reason which could have legitimately persuaded the Government to defer the approval of the rules till February, 2006 and then proceed to give the corporation

sanction for regularising the casual/daily wages employees. To cap it all, after having issued such an order granting approval of regularisation of casual/daily wages employees, the Government on the same day proceeded to approve the service rules which, significantly contemplates appointment to the various posts in the corporation with the involvement of the Public Service Commission. It is, after taking note of these facts, the Government revoked Ext.P5, by Ext.P12 order. I am of the view that the reasons given by the Government in Ext.P12 are eminently sustainable and do not require any interference by this court.

Regarding Contention (d)

36. Learned counsel for the petitioners contended that many among the petitioners were engaged on casual/daily wages basis in the Corporation from 1997, 2000, 2001 or 2002. They legitimately thought that they will be absorbed into regular service. They were actually

absorbed into regular service pursuant to Ext.P5. It, therefore, causes serious prejudice and hardship to them, if their services are terminated due to a subsequent order passed by the Government. It is true that considerable heart-burn may be caused to several among the petitioners, by virtue of Ext.P12 and the consequential order terminating their services. But, that is not a reason to interfere with Ext.P12. The court is bound to take note of the fact that the original entry of the petitioners into the service of the Corporation, which, as mentioned above, repeatedly, is public employment, cannot be considered as legal, regular or proper. In the matter of public employment, the employer will have to act in conformity with Articles 14 and 16 of the Constitution by affording an equal and legitimate opportunity to all persons desirous of securing such employment. That was not done. To recognise any right in favour of such persons

will be to place a premium on the violation of the sublime constitutional provisions of Articles 14 and 16 of the Constitution and the law declared by the Apex Court and by this court on various occasions. To recognise such a right in favour of the petitioners will be to ignore a paramount and more valuable right available to several other members of the public, who are also waiting for an entry in Government service or in the service of the instrumentalities of the State.

37. In my view, the cause for the anguish and heartburn suffered by the petitioners will have to be laid at the door step of the Government and corporation, when the Government passed Ext.P5 order.

Regarding contention (e)

38. Learned counsel for the petitioners refers to the orders passed by the Government regularising the services of other casual/ad hoc/daily wages employees in other Government

Corporations. Reference is made to Ext.P11 order relating to Kerala Minerals and Metals Limited and Exts.P20 to P29 orders in relation to certain Government companies. It is contended that Ext.P5 order is only similar to such orders and should not have been revoked. I cannot accept this submission. The validity of Ext.P11 and Ext.P20 to P29 orders is not an issue which arises for consideration in this writ petition and therefore, I refrain from making any comment on the same. But the question, in the present case, is whether Ext.P5 passed by the Government is legal, constitutional and proper. I have already held that Ext.P5 is unconstitutional and was, therefore, rightly revoked by the Government. If that be so, an order passed by the Government, in the case of other Government companies cannot afford a right to the petitioner to claim a parity of treatment. After all, this court cannot issue a writ of mandamus to the Government or the corporation to

perpetuate an illegality. This contention of the petitioners is also rejected.

39. For all these reasons, I am of the view that Ext.P12 order passed by the Government is legal, proper and sustainable. Consequential orders passed by the Government and the corporation also do not warrant any interference under Article 226 of the Constitution.

In the result, I do not find any merit in these writ petitions and the same are, therefore, dismissed.

Sd/-

(V.GIRI)

JUDGE

sk/